

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Gerry Smart,
Petitioner

v.

Case No. 13-cv-375-SM
Opinion No. 2014 DNH 015

Warden, Federal Correctional
Institution, Berlin, New Hampshire,¹
Respondent

O R D E R

Gerry Smart, an inmate at the Federal Correctional Institution in Berlin, New Hampshire ("FCIB"), has filed a petition, pursuant to 28 U.S.C. § 2241. The matter is before the court pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("§ 2254 Rules"). See § 2254 Rule 1(b) (allowing application of the § 2254 Rules to any habeas petition).

Claims

In his § 2241 petition, Smart asserts that the federal Bureau of Prisons, in executing a federal sentencing order, has deprived him of liberty without due process: (1) by relinquishing primary authority over Smart on June 28, 2010, after the United States had assumed such jurisdiction in March 2010, thereby

¹ Petitioner's present custodian is Esker Tatum, warden of the Federal Correctional Institution in Berlin, New Hampshire. Warden Tatum is the appropriate respondent in this action.

waiving the right to incarcerate Smart after June 28, 2010; and (2) by failing to compute his federal sentence in a manner that credits the time he served in the Mississippi Department of Corrections against his federal sentence.

Discussion

Upon review of the pleadings filed by Smart, the court finds that one or more of the claims sufficiently alleges that Smart is "in custody in violation of the Constitution . . . of the United States," 28 U.S.C. § 2241(c)(3), to allow this matter to proceed. The court further finds that Smart appears to have exhausted the claims raised in this petition. The petition (doc. no. [1](#)) shall therefore be served; the clerk's office is directed to serve the petition on Esker Tatum, the FCIB warden.

Respondent shall file an answer or other pleading in response to the allegations made in the habeas petition. The answer shall comply with the requirements of § 2254 Rule 5.

SO ORDERED.



Steven J. McAuliffe
United States District Judge

January 23, 2014

cc: Gerry Smart, pro se
Seth R. Aframe, Esq.